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13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15
 16 JOHN PETERSON, individually,

CASE NO.: 2:22-cv-1509-JCM-NJK

17 Plaintiff,

18 vs.

19 UNITED FINANCIAL CASUALTY
 20 COMPANY; DOES I-V; and ROE
 21 CORPORATIONS VI-X, inclusive,

**PLAINTIFF JOHN PETERSON'S
 MOTION FOR LEAVE TO FILE
 FIRST AMENDED COMPLAINT
 AGAINST DEFENDANT UNITED
 FINANCIAL CASUALTY
 COMPANY**

22 Defendants.

23
 24 Plaintiff JOHN PETERSON, by and through his counsel of record, Dennis M.
 Prince and Kevin T. Strong of PRINCE LAW GROUP, and Craig W. Drummond and
 25 Liberty A. Pardee of DRUMMOND LAW FIRM, hereby submits his *Motion for Leave to*
 26 *File First Amended Complaint Against Defendant United Financial Casualty Company.*
 27
 28 . . .



This Motion is based upon the pleadings and papers on file in this action, the Memorandum of Points and Authorities set forth herein, and any exhibits attached hereto.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff John Peterson (“Peterson”) discovered an additional factual basis to support his claims that Defendant United Financial Casualty Company (“United Financial”) breached its contract and breached the implied covenant of good faith and fair dealing. Specifically, United Financial produced documents that demonstrate a billing scheme that it used to prematurely cancel the auto liability insurance policy issued to its insureds and non-parties, Guadalupe Zazueta (“Zazueta”) and Pedro Perez-Papias (“Perez-Papias”). United Financial knew Zazueta and Perez-Papias were not late on their insurance premium payments, yet still decided to cancel their coverage without a reasonable basis. As a result, United Financial not only breached its policy, but also breached the covenant of good faith and fair dealing owed to its insureds. United Financial also violated the Nevada Unfair Claims Practices Act and Nevada law because its coverage cancellation notice was inadequate under Nevada law.

“The Ninth Circuit has made clear that courts should apply Rule 15(a) with **extreme liberality**” when permitting amendments to a pleading. *Sanchez v. Albertsons, LLC*, No. 2:19-cv-02017-JAD-DJA, 2022 U.S. Dist. LEXIS 239273, at *2 (D. Nev. July 5, 2022) (emphasis added). Peterson respectfully requests this Court to grant leave to amend his Complaint to allege these facts to support viable theories of liability against United Financial for breach of contract and insurance bad faith. Peterson also requests this Court allow him to assert a new claim for violation of Nevada’s Unfair Claims Practices Act.

II.

STATEMENT OF FACTS

This insurance bad faith and judgment enforcement action arises from a motor vehicle collision that culminated in the entry of a default judgment against United



1 Financial's insured, Perez-Papias. On November 12, 2017, Peterson rode as a passenger
 2 in a 2013 Cadillac ATS that non-party Lindel Wayne Watkis drove southbound on State
 3 Route 582 (Boulder Highway). (ECF No. 1-2, at p. 2, ¶ 8). Perez-Papias, while driving a
 4 2000 Chevrolet 3500 pickup truck, failed to use due care and negligently collided with
 5 the rear of Peterson's vehicle. *Id.* at p. 3, ¶¶ 9-11; *See also*, Traffic Accident Report, at
 6 Bates nos. Peterson0002–Peterson0003, attached as **Exhibit 1**. The strength of the
 7 impact was substantial enough to cause Peterson's vehicle to veer to the right, enter the
 8 travel lane next to him, and strike the right paved shoulder before finally coming to a
 9 stop on the paved sidewalk. **Exhibit 1**, at Bates no. Peterson0003. Perez-Papias was
 10 arrested at the scene of the subject collision on suspicion of driving under the influence
 11 of alcohol. (ECF No. 1-2, at p. 3, ¶ 13); *See also*, **Exhibit 1**, at Bates no. Peterson0003.

11 **A. The United Financial Insurance Policy and its Subsequent Premature**
Cancellation

12 On August 24, 2017, Zazueta applied for a commercial auto liability insurance
 13 policy from United Financial, an affiliate company of Progressive Commercial
 14 Insurance. *See* Application for Insurance – United Financial, at Bates nos.
 15 UFCC000165–UFC000170, attached as **Exhibit 2**. In her application, Zazueta listed
 16 Perez-Papias as a rated driver to add to the policy. *Id.* at Bates no. UFCC000165.¹ On
 17 August 24, 2017, the United Financial policy, Policy No. 04093866-0, insuring Zazueta
 18 and Perez-Papias, became effective. *See* United Financial Policy Declarations Page, at
 19 Bates Nos. UFCC000155–UFCC000156, attached as **Exhibit 3**. The policy term for the
 20 United Financial insurance policy, Policy No. 04093866-0, was August 24, 2017 through
 21 August 24, 2018. *Id.* at Bates no. UFCC000155. The 2000 Chevrolet pickup truck Perez-
 22 Papias drove at the time of the subject collision was the listed vehicle on the United
 23 Financial insurance policy and was therefore, an insured auto under the policy. *Id.*

24 Zazueta's insurance application and the policy declarations page both confirmed
 25 the total policy premium for the year of coverage was \$3,182.00. *See* **Exhibit 2**, at Bates

26
 27 ¹ The traffic accident report incorrectly refers to Perez-Papias as "Prez-Papias." See
 28 **Exhibit 1**, at Bates no. Peterson0002. Neither United Financial nor Progressive have
 ever contended Prez-Papias is a different person.

1 no. UFCC000165; **Exhibit 3**, at Bates no. UFC000155. Zazueta's application articulated
 2 a premium payment plan of ten payments. *See Exhibit 2*, at Bates no. UFCC000165.
 3 Although United Financial requested an initial payment of \$636.40 to cover the first two
 4 premium payments, Zazueta paid \$656.40. *Id.* Zazueta's initial payment of \$656.40 for
 5 two premium payments should have provided coverage for her and Perez-Papias from
 6 August 24, 2016 through November 6, 2017, based on the daily premium rate. Yet, on
 7 September 8, 2017, United Financial mailed Zazueta a bill to remit her insurance
 8 premium payment in the amount of \$274.85. *See* Sep. 8, 2017 Commercial Auto
 9 Insurance Bill for Aug. 24, 2017–Sep. 8, 2017, at Bates no. UFCC000171, attached as
 10 **Exhibit 4**. United Financial provided a due date of September 24, 2017 for Zazueta to
 11 remit her premium payment. *Id.* On October 8, 2017, United Financial mailed Zazueta
 12 another bill requesting she remit payment in the amount of \$579.70, which included the
 13 unpaid premium payment requested in the September 8, 2017 bill, along with
 14 installment fees and late fees. *See* Oct. 8, 2017 Commercial Auto Insurance Bill for Sep.
 15 8, 2017–Oct. 8, 2017, at Bates no. UFCC000173, attached as **Exhibit 5**. On October 30,
 16 2017, United Financial mailed its Cancellation Notice to Zazueta:

16 **Cancellation Notice**

17 Unfortunately, we didn't receive your payment and, as a
 18 result, your policy will be cancelled at 12:01 a.m. on
 November 10, 2017.

19 Please know that this means you will no longer have
 insurance coverage.

20 We value you as a customer and want to continue being
 21 your insurance provider. To avoid cancellation, please send
 us your payment by check or money order so that it is
 22 received or postmarked by 12:01 a.m. on November 10,
 2017. This way, there will be no lapse in your coverage.

23 If you've already sent your payment, thank you. Your next
 24 regular payment will be due on November 24, 2017.

25 You can also pay online or over the phone using a credit
 card or authorizing a withdrawal from your bank account.
 26 We'll credit your payment right away so your insurance
 coverage will continue.

27 We sincerely appreciate your attention to this matter and
 28 thank you for your business.

1 See Oct. 30, 2017 Cancellation Notice, at Bates no. UFCC000176, attached as **Exhibit**
 2 **6.**

3 On November 12, 2017, United Financial mailed its Final Bill to Zazueta
 4 confirming “you no longer have insurance with us, effective November 10, 2017.” See
 5 Nov. 12, 2017 Final Bill, at Bates no. UFCC000178, attached as **Exhibit 7.** United
 6 Financial demanded Zazueta remit payment in the amount of **\$67.60**, of which \$23.60
 7 represented the unpaid policy premium for coverage until November 10, 2017. *Id.*
 8 Notably, the final bill stated the total policy premium for coverage until November 9,
 9 2017 was **\$680.00.** *Id.*

10 **B. Peterson’s Lawsuit for Personal Injuries and Subsequent Default**
Judgment Entered Against Perez-Papias

11 On December 12, 2017, Peterson, through his retained counsel, faxed a letter to
 12 United Financial requesting “a copy of your insured’s declaration page.” (ECF No. 1-2,
 13 at p. 5, ¶ 28); *See also*, Dec. 12, 2017 letter, at Bates no. UFCC000336, attached as
 14 **Exhibit 8.** Peterson’s counsel referenced the claim number associated with the bodily
 15 injury claim he submitted to United Financial. *See Exhibit 8.* On December 14, 2017,
 16 Jalayne Zayas, an employee of the Progressive Claims Department, responded to
 Peterson’s December 12, 2017 letter:

17 To Whom it May Concern:

18 This letter is to advise you that unfortunately, after
 19 investigating all the available information, I was unable to
 find valid coverage for this incident. As a result we won’t
 20 be able to pay the claim for the loss on November 12, 2017,
 regarding claim number 17-3262492.

21 (ECF No. 1-2, at p. 5, ¶ 29); *See also*, Nov. 12, 2017 United Financial/Progressive letter,
 22 at Bates no. UFCC000337, attached as **Exhibit 9.**

23 On January 28, 2019, Peterson filed his complaint for personal injuries arising
 24 from the November 12, 2017 motor vehicle collision against Perez-Papias. (ECF No. 1-2,
 25 at p. 5, ¶ 30); *See also*, Jan. 28, 2019 personal injury complaint, Eighth Judicial District
 Court Case No. A-19-788276-C, attached as **Exhibit 10.²** On January 31, 2019, Peterson

28 ² Peterson’s personal injury complaint refers to Perez-Papias as “Prez-Papias”
 presumably because of the traffic accident report. *See Exhibit 10*, at p. 1.

1 served Perez-Papias with his personal injury complaint. (ECF No. 1-2, at p. 5, ¶ 31); *See*
 2 *also*, Feb. 7, 2019 Affidavit of Service, Eighth Judicial District Court Case No. A-19-
 3 788276-C, attached as **Exhibit 11**. On March 12, 2019, Peterson filed his Three-Day
 4 Notice of Intent to Default Against Perez-Papias. (ECF No. 1-2, at p. 5, ¶ 32). On March
 5 18, 2022, the Clerk of the Eighth Judicial District Court entered a Default against Perez-
 6 Papias resulting from his failure to file an answer to Peterson's personal injury
 7 complaint. *Id.* at p. 6, ¶ 33); *See also*, Mar. 18, 2019 Default, Eighth Judicial District
 8 Court Case No. A-19-788276-C, attached as **Exhibit 12**. On April 2, 2019, Peterson filed
 9 his Motion for Default Judgment. (ECF 1-2, at p. 6, ¶ 34). On July 31, 2020, the Eighth
 10 Judicial District Court entered its Judgment, Assignment, and Order against Perez-
 11 Papias in the personal injury action. *See* Aug. 3, 2020 Notice of Entry of Judgment,
 12 Assignment, and Order, Eighth Judicial District Court Case No. A-19-788276-C, at
 13 Bates nos. UFCC000342–UFCC000347, attached as **Exhibit 13**. The July 31, 2020
 14 Judgment entered against Perez-Papias encompassed various categories of damages
 Peterson sustained as a result of the subject motor vehicle collision:

15 PAST MEDICAL EXPENSES: \$52,124.13

16 FUTURE MEDICAL EXPENSES: \$294,140.00

17 PAST PAIN & SUFFERING: \$1,500,000.00

18 FUTURE PAIN & SUFFERING: \$1,000,000.00

19 PUNITIVE DAMAGES: \$2,000,000.00

20 SUBTOTAL: \$4,846,264.13

21 ATTORNEY'S FEES OF 40%: \$1,938,505.65

22 COSTS [NRS18.025]: \$1,664.50

23 SUBTOTAL: \$6,786,434.28

24 INTEREST [NRS 17.130]: \$720,538.57

25 **TOTAL JUDGMENT, WITH INTEREST ACCRUING**

26 **AT THE NEVADA LEGAL RATE FROM 7/22/20**

27 **UNTIL SATISFIED:** \$7,506,972.85

28 *Id.* at Bates no. UFCC000343.

1 The Judgment also ordered the assignment of Perez-Papias's claims and or causes
 2 of action against United Financial to Peterson:

3 3. It is further ORDERED that Plaintiff is hereby
 4 ASSIGNED any rights/claims that Defendant PEDRO
 5 PREZ-PAPIAS has for bad faith, unfair trade practices,
 6 and any other claims arising out of this case against his
 7 insurer under the authority outlined in *Gallegos v. Malco*
Enterprises of Nevada, dba Budget Rent A Car, 127 Nev.
 8 Adv. Op. 51, 255 P.3d 1287 (2011). In effectuating this
 9 assignment, Plaintiff may file claims related to this case
 10 against PROGRESSIVE, UNITED FINANCIAL
 11 CASUALTY COMPANY, and/or any other company
 12 responsible for the processing, defending, denial, and
 13 payment of any insurance coverage of Defendant PEDRO
 14 PREZ-PAPIAS on his behalf. Plaintiff may take all acts
 15 related to the prosecuting and investigating of any claims
 16 that Defendant PEDRO PREZ-PAPIAS may have against
 17 his insurer, to include requesting records, invoices, directly
 18 from his insurance company, copies of correspondence,
 19 request for claims files, subpoenas, responding to discovery
 20 and any and all other rights that PEDRO PREZ-PAPIAS
 21 himself would have in connection with his operation of a
 22 motor vehicle, and insurance in place for his person, or
 23 vehicle, on November 12, 2017.

24 Id. at Bates no. UFCC000353.

25 Peterson served the July 31, 2020 Judgment, Assignment, and Order to United
 26 Financial/Progressive on August 3, 2020. *Id.* at Bates no. UFCC000351.

27 **C. Peterson's Insurance Bad Faith and Judgment Enforcement Action**
 28 **Against United Financial**

1 Pursuant to the judicial assignment encompassed in the July 31, 2020 Judgment,
 2 Assignment and Order, Peterson filed the present action against United Financial. (ECF
 3 No. 1-2, at pp. 6-7, ¶ 38). Peterson alleges claims for breach of contract, fraudulent and
 4 intentional misrepresentation, breach of the contractual covenant of good faith and fair
 5 dealing, and breach of the tortious covenant of good faith and fair dealing. *Id.* at pp. 11–
 6 15, ¶¶ 56–87). Peterson now wishes to amend his Complaint to assert a separate factual
 7 theory of liability predicated upon United Financial's erroneous billing scheme, which
 8 resulted in its premature disclaimer of coverage and failure to provide an adequate
 9 explanation for the cancellation of coverage.

10 ...

11 ...

1 III.

2 LEGAL ARGUMENT

3 FRCP 15(a)(2) allows a party to amend its pleading with the opposing party's
 4 written consent or with leave of the court. A court should freely grant leave to amend
 5 "when justice so requires." *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (*quoting*
 6 FED. R. CIV. P. 15(a)). Rule 15(a) grants a district court discretion to allow amendments
 7 to pleadings. *Id.* The district court however, "must remain guided by the underlying
 8 purpose of Rule 15 . . . to facilitate decision[s] on the merits, rather than on the pleadings
 9 or technicalities." *Id.* As a result, Rule 15(a)(2) is "to be applied with extreme liberality."
 10 *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003).

11 A district court considers various factors to determine whether to grant a party
 12 leave to amend his pleading:

- 13 (1) bad faith, (2) undue delay, (3) prejudice to the opposing
 14 party, (4) futility of amendment, and (5) whether plaintiff
 15 has previously amended his complaint.

16 *JPMorgan Chase Bank, N.A. v. KB Home*, 740 F. Supp. 2d 1192, 1197 (D. Nev. 2010)
 17 (*quoting Allen v. Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990)).

18 "The factors do not weigh equally; as the Ninth Circuit has explained, prejudice
 19 receives the greatest weight." *McCullough v. Machado*, No. 3:16-cv-00225-MMD-VPC,
 20 2017 U.S. Dist. LEXIS 140489, at *3 (D. Nev. Aug. 30, 2017) (*citing Eminence Capital*,
 21 316 F.3d at 1052). Given the "strong public policy in favor of permitting amendment,"
 22 Peterson respectfully requests this Court to grant leave to amend to assert an additional
 23 factual theory of liability and claim for violation of Nevada's Unfair Claims Practices
 24 Act against United Financial.

25 **A. The Policy Documents Provide a Sufficient Factual Basis to Allege**
United Financial Prematurely Cancelled its Auto Liability Insurance
Policy Without a Reasonable Basis

26 On August 24, 2017, the United Financial commercial auto policy covering Perez-
 27 Papias became effective. *See Exhibit 3*, at Bates no. UFCC000155. The policy period
 28 ran from August 24, 2017 through August 24, 2018. *Id.* The total premium for that one
 year of coverage was \$3,182.00 and Zazueta, the named insured, agreed to a payment
 plan of ten payments. *Id.*; *See also, Exhibit 2*, at Bates no. UFCC000165. The total

1 premium of \$3,182.00 divided by ten payments equals \$318.20. On August 24, 2017,
 2 United Financial required Zazueta to tender an initial payment for \$636.40, which
 3 equaled two premium payments under the ten payment plan. ($\$318.20 \times 2 = \636.40).
 4 Zazueta paid \$656.40, which paid for over two months of coverage based on the daily
 5 premium rate of \$8.72, which is rounded up from the actual amount
 6 ($\$3,182.00 / 365 = \8.717) ($\$8.72 \times 75 \text{ days} = \654.00). Based on Zazueta's initial premium
 7 payment of \$656.40, United Financial should have first requested Zazueta to pay the
 8 policy's next premium payment in the month of November. Instead, United Financial
 9 sent two bills on September 8, 2017 and October 8, 2017 demanding Zazueta to make
 10 additional premium payments even though she already paid for coverage for that two-
 11 month period. See **Exhibit 4**, at Bates no. UFCC000171; **Exhibit 5**, at Bates no.
 12 UFCC000173. United Financial then used Zazueta's failure to remit premium payments
 13 that she did not owe in September or October 2017 to prematurely cancel coverage under
 14 the auto insurance policy on November 10, 2017, a mere two days before the subject
 15 motor vehicle collision. See **Exhibit 6**, at Bates no. UFCC000176. To further validate
 16 United Financial's unfair and misleading billing scheme, its final bill mailed to Zazueta
 17 requested a premium payment in the amount of \$23.60, exclusive of the \$24.00
 18 installment fee and \$20.00 late fee. See **Exhibit 7**, at Bates no. UFCC000178. This
 19 amount, which was owed as of November 10, 2017, fell far below the approximate
 20 \$557.70 premium payment United Financial sought to collect just days earlier. See
Exhibit 5, at Bates no. UFC000173.

21 United Financial attempted to collect premium payments well in advance of when
 22 those payments were actually due. Zazueta paid for auto liability insurance that covered
 23 Perez-Papias from August 24, 2017 through at least November 6, 2017. Thus, United
 24 Financial should have mailed its first bill to collect a premium payment from Zazueta
 25 on November 8, 2017 and requested payment no later than November 24, 2017. Its
 26 failure to do so resulted in a breach of contract, breach of the implied covenant of good
 27 faith and fair dealing, and violation of the Nevada Unfair Claims Practices Act resulting
 28 from an inadequate notice of cancellation of coverage under Nevada law.

...
 29

1 ***1. Breach of contract***

2 The Progressive Commercial auto insurance policy that provided coverage to
 3 Perez-Papias articulated the scope of its insuring agreement:

4 **PART I – LIABILITY TO OTHERS**

5 **INSURING AGREEMENT – LIABILITY TO OTHERS**

6 Subject to the Limits of Liability, if **you** pay the premium
 7 for liability, coverage for the **insured auto** involved, we
 8 will pay damages, other than punitive or exemplary
 9 damages, for **bodily injury, property damage, and**
 10 **covered pollution cost or expense**, for which an insured
 11 becomes legally responsible because of an accident arising
 12 out of the ownership, maintenance, or use of that **insured**
 13 **auto**

14 We will settle or defend, at **our** option, any claim or
 15 lawsuit for damages covered by this Part I.

16 See Progressive Nevada Commercial Auto Policy, at Bates no. UFCC000188, attached
 17 as **Exhibit 14** (emphasis added and in original).

18 United Financial expressly agreed to defend its insured, Perez-Papias, against
 19 any lawsuit for damages covered under the insurance policy. “[W]here there is potential
 20 coverage based on ‘comparing the allegations of the complaint with the terms of the
 21 policy,’ an insurer does have a duty to defend.” *Century Sur. Co. v. Andrew*, 432 P.3d
 22 180, 184 n.4 (Nev. 2018) (*quoting United Nat'l Ins. Co. v. Frontier Ins. Co.*, 99 P.3d 1153,
 23 1158 (Nev. 2004)). In his personal injury complaint, Peterson alleged Perez-Papias
 24 negligently drove his Chevrolet pickup truck when he collided into the back of his
 25 Peterson’s vehicle and that his negligence caused Peterson’s injuries. See **Exhibit 10**,
 26 at pp. 2-3, ¶¶ 6-9. Perez-Papias’s pickup truck was the only vehicle listed on the United
 27 Financial insurance policy. See **Exhibit 3**, at Bates no. UFCC000155. United Financial
 28 prematurely cancelled Perez-Papias’s coverage under the insurance policy without a
 reasonable basis. As a result, United Financial breached its contractual duty to defend
 Perez-Papias against Peterson’s personal injury lawsuit. United Financial also relied on
 its baseless cancellation of coverage to refuse to settle Peterson’s bodily injury claim or
 otherwise indemnify him against Peterson’s bodily injury claim. In this regard, the
 factual circumstances that give rise to United Financial’s erroneous cancellation of
 coverage support Peterson’s request to amend his complaint.

1 **2. Breach of the implied covenant of good faith and fair dealing**

2 The relationship between an insurer and its insured is one of “special confidence.”
 3 *Ainsworth v. Combined Ins. Co.*, 763 P.2d 673, 676 (Nev. 1988). This relationship is
 4 recognized as fiduciary-like. *Powers v United Servs. Auto. Ass’n*, 962 P.2d 596, 603 (Nev.
 5 1998). As a result, the special relationship between insurer and insured is “characterized
 6 by elements of public interest, adhesion, and fiduciary responsibility.” *Ins. Co. of the*
 7 *West v. Gibson Tile Co.*, 134 P.3d 698, 702 (Nev. 2006). The nature of this relationship
 8 gives rise to the duty of good faith and fair dealing. *USF Ins. Co. v. Smith’s Food & Drug*
 9 *Ctr., Inc.*, 921 F. Supp. 2d 1082, 1090 (D. Nev. 2013) (*citing Powers*, 962 P.2d at 601).
 10 The tort of bad faith is defined as “an actual or implied awareness of the absence of a
 11 reasonable basis for denying benefits of the [insurance] policy.” *Allstate Ins. Co. v. Miller*,
 12 212 P.3d 318, 324 (Nev. 2009).

13 Peterson’s proposed amendment to his Complaint supports an additional theory
 14 of liability against United Financial for its tortious breach of the covenant of good faith
 15 and fair dealing. Peterson alleges United Financial cancelled coverage for Perez-Papias
 16 for two missed premium payments during a two-month time period for which United
 17 Financial already collected premium payments from Zazueta and/or Perez-Papias. In
 18 essence, United Financial knowingly employed a billing scheme whereby it unfairly
 19 sought to collect premiums before it became necessary to do so, and then relied on those
 20 missed payments to erroneously cancel coverage. As such, United Financial knowingly
 21 cancelled Perez-Papias’s coverage for missing premium payments that were not owed
 22 when United Financial sent its bills and sought payment. These factual allegations
 23 demonstrate United Financial willfully denied benefits owed to Perez-Papias without a
 24 reasonable basis.

25 **3. Violation of the Nevada Unfair Claims Practices Act**

26 The Nevada Unfair Claims Practices Act is codified in Chapter 686A of the
 27 Nevada Revised Statutes. NEV. REV. STAT. 686A.310. NRS 686A.310 “addresses the
 28 manner in which an insurer handles an insured’s claim whether or not the claim is
 denied.” *Zurich Am. Ins. Co. v. Coeur Rochester, Inc.*, 720 F. Supp. 2d 1223, 1236 (D.
 Nev. 2010). “The statute lists sixteen activities that constitute unfair practices.” *Sahinov*

1 *v. Geico Advantage Ins. Co.*, No. 2:21-CV-919 JCM (VCF), 2021 U.S. Dist. LEXIS 205029,
 2 at *11 (D. Nev. Oct. 25, 2021). “When an insurance company engages in one of these
 3 prohibited activities, the insured may bring a private right of action against the insurer
 4 for violations of the statute.” *Id.* NRS 686A.310 states, in pertinent part:

5 1. Engaging in any of the following activities is considered
 6 to be an unfair practice:
 7 ...

8 (m) Failing to comply with the provisions of NRS 687B.310
 9 to 687B.390, inclusive, or 687B.410.

10 NRS 687B.320(1) articulates the ground for which an insurer, other than an
 11 industrial insurer, may cancel a policyholder’s insurance policy. NRS 687B.310 governs
 12 the notice requirements for cancellations of insurance policies and states, in pertinent
 13 part:

14 6. Any notice to an insured required pursuant to NRS
 15 687B.320 to 687B.350, inclusive, must be personally
 16 delivered to the insured or mailed first class or certified to
 17 the insured at the address of the insured last known by the
 18 insurer. The notice must state the effective date of the
 19 cancellation or nonrenewal and be **accompanied by a**
 20 **written explanation of the specific reasons for the**
 21 **cancellation or nonrenewal** (emphasis added),

22 NRS 687B.360 specifies the consequences for an insurer’s failure to explain the
 23 reasons for its cancellation of an insurance policy:

24 If a notice of cancellation or nonrenewal under NRS
 25 687B.310 to 687B.420, inclusive, **does not state with**
 26 **reasonable precision the facts on which the insurer’s**
 27 **decision is based, the insurer shall supply that**
 28 **information within 6 days after receipt of a written**
 29 **request by the policyholder. No notice is effective**
 30 **until it contains adequate information about the**
 31 **policyholder’s right to make such a request** (emphasis
 32 added).

33 “These statutes aim to provide policyholders ‘protection against arbitrary
 34 termination’ of insurance coverage.” *O.P.H. of Las Vegas, Inc. v. Or. Mut. Ins. Co.*, 401
 35 P.3d 218, 220 (Nev. 2017) (*quoting* NEV. REV. STAT. 687B.310(3)). United Financial’s
 36 notice stated Zazueta’s and Perez-Papias’s coverage will be cancelled because it did not
 37 receive “your payment.” See **Exhibit 6**, at Bates no. UFCC000176. United Financial’s
 38 notice failed to explain why it cancelled coverage for missed premium payments for the

1 months of September and October 2017 when Zazueta and Perez-Papias already
 2 remitted their premium payments for those months. *Id.* Thus, United Financial failed
 3 to provide a precise explanation detailing how it could cancel coverage for missed
 4 premium payments that Zazueta and/or Perez-Papias paid at the inception of the policy.
 5 If United Financial provided such an explanation, Zazueta and Perez-Papias could have
 6 challenged the erroneous timing of United Financial's coverage cancellation.

7 United Financial was also legally required to state in its notice that Zazueta and
 8 Perez-Papias had the right to request the precise facts United Financial relied upon to
 9 cancel their coverage. *See NEV. REV. STAT. 687B.360.* United Financial failed to provide
 10 these instructions. *See Exhibit 6*, at Bates no. UFCC000176. This magnified the harm
 11 Zazueta and Perez-Papias suffered because they were left to believe they had no recourse
 12 to request United Financial clarify how it cancelled coverage for missed premium
 13 payments that they already paid. These factual allegations provide the requisite basis
 14 to allege United Financial violated subsection (m) of the Nevada Unfair Claims Practices
 15 Act. Accordingly, Peterson respectfully requests this Court grant leave to amend to
 assert that claim.

16 **B. None of the Relevant Factors Justify the Denial of Peterson's Request**
for Leave to Amend His Complaint

17 The Ninth Circuit and this Court have recognized various factors to consider
 18 when determining whether to allow leave to amend. *See United States ex rel. Lee v.*
19 Corinthian Colleges, 655 F.3d 984, 995 (9th Cir. 2011); *New Eng. Life Ins. Co. v. Lee*, No.
 20 2:14-cv-01797-JCM-NJK, 2016 U.S. Dist. LEXIS 190315, at *2-3 (D. Nev. Apr. 26, 2016).
 21 None of those factors weigh against Peterson's requested amendments to his Complaint.

22 **1. *Bad faith***

23 Peterson's requested amendment to his Complaint is not predicated upon bad
 24 faith. Rather, Peterson has relied upon documents, including a certified copy of the
 25 insurance policy that United Financial produced, to support his claims that United
 26 Financial erroneously cancelled coverage without a reasonable basis. These documents
 27 create a reasonable factual inference that United Financial attempted to collect
 28 premium payments prematurely and later relied on those unpaid and improper

1 premium bills to erroneously coverage. Bad faith is nonexistent under these facts and,
 2 as a result, does not justify the denial of Peterson's Motion.

3 ***2. Undue delay***

4 Peterson's requested amendment is also not the product of undue delay because
 5 he timely filed his motion for leave to amend in accordance with the discovery scheduling
 6 order. (ECF No. 13, at p. 3). The timing of this motion will afford United Financial ample
 7 time to prepare its witnesses to discuss the nature of their billing operations generally
 8 and as it relates to the policy at issue in this case. United Financial will also have time
 9 to gather sufficient facts needed to develop any defenses to these claims. Peterson
 10 submits that undue delay, which standing alone, does not provide sufficient grounds for
 11 denying leave to amend, does not weigh against allowing leave to amend here. *See Hurn*
v. Retirement Fund Trust of Plumbing, Heating & Piping Industry, 648 F.2d 1252, 1254
 12 (9th Cir. 1981).

13 ***3. Prejudice to the opposing party***

14 Peterson's proposed amendment will not unduly prejudice United Financial.
 15 United Financial cannot claim surprise by Peterson's amendment given the basis for
 16 which United Financial cancelled coverage. Moreover, Peterson's proposed amendment
 17 will not result in overly burdensome discovery obligations for United Financial because
 18 it relates to the central factual issue in this case, namely the adequacy of United
 19 Financial's coverage cancellation. The mere fact that United Financial will have to
 20 refute this additional theory of liability does not support a finding of undue prejudice.
Lee, 2016 U.S. Dist. LEXIS 190315, at *3. Therefore, this factor does not warrant the
 21 denial of Peterson's request for leave to amend.

22 ***4. Futility of amendment***

23 "[A] proposed amendment is futile only if no set of facts can be proved under the
 24 amendment to the pleadings that would constitute a valid claim or defense." *Spencer v.*
AT&T Digital Life, Inc., No. 2:14-cv-01136-RFB-PAL, 2015 U.S. Dist. LEXIS 116288, at
 25 *5 (D. Nev. Sep. 1, 2015). Here, Peterson has presented well-pleaded facts to establish
 26 that United Financial prematurely charged its insureds, Zazueta and Perez-Papias, for
 27 premium payments that were already paid. United Financial then relied on those missed

1 premature charges to cancel coverage for Zazueta and Perez-Papias thereby abandoning
 2 Perez-Papias when Peterson sued him for personal injuries. These facts, if proven, will
 3 establish United Financial's liability for breach of contract, bad faith, and violation of
 4 Nevada's Unfair Claims Practices Act. Therefore, Peterson's proposed amendments are
 5 not futile.

5. *Whether plaintiff has previously amended his complaint*

This is Peterson's first request for leave to amend his complaint. As a result, Peterson is not using this proposed amendment to burden United Financial or for any other dilatory purpose. Rather, Peterson believes, in good faith, that the proposed facts, as alleged, provide another avenue to hold United Financial liable for breach of contract, bad faith, and violation of Nevada's Unfair Claims Practices Act.

IV.

CONCLUSION

In the absence of prejudice or a strong showing that any of the remaining factors do not support leave to amend, "there exists a presumption under Rule 15(a) in favor of granting leave to amend." *Sharkey v. O'Neal*, 778 F.3d 767, 774 (9th Cir. 2015). The mandate that leave to shall be freely given when justice so requires "is to be heeded." *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230 (1962).

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In accordance with the well-established policy to liberally allow leave to amend and, based on the foregoing facts, law, and analysis, Peterson respectfully requests this Court to grant his Motion for Leave to File First Amended Complaint Against Defendant United Financial Casualty Company. A copy of Peterson's proposed First Amended Complaint is attached as **Exhibit 15**.

DATED this 13th day of March, 2023.

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CERTIFICATE OF SERVICE

Pursuant to LR 5-1 and FRCP 5(b), I hereby certify that I am an employee of
PRINCE LAW GROUP and that on the 13th day of March, 2023, I electronically filed
the foregoing document entitled **PLAINTIFF JOHN PETERSON'S MOTION FOR**
LEAVE TO FILE FIRST AMENDED COMPLAINT AGAINST DEFENDANT
UNITED FINANCIAL CASUALTY COMPANY with the Clerk of the Court using the
CM/ECF system, which sent a notice of electronic filing to the following:

7 John T. Keating
8 **KEATING LAW GROUP**
9 9130 W. Russell Road
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11 Las Vegas, Nevada 89148
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Attorneys for Defendant
United Financial Casualty Company

/s/ Kevin T. Strong
An Employee of Prince Law Group



1 *Peterson v. United Financial Casualty Company*

2 Case No. 2:22-cv-1509-JCM-NJK

3 **Index of Exhibits**

EXHIBIT	DOCUMENT DESCRIPTION
1	Traffic Accident Report
2	Application for Insurance – United Financial Casualty Company
3	United Financial Policy Declarations Page, Policy No. 04093866-0
4	Sep. 8, 2017 Commercial Auto Insurance Bill for Aug.24, 2017–Sep. 8, 2017
5	Oct. 8, 2017 Commercial Auto Insurance Bill for Sep. 8, 2017–Oct. 8, 2017
6	Oct. 30, 2017 Cancellation Notice
7	Nov. 12, 2017 Final Bill
8	Dec. 12, 2017 Letter from Peterson to United Financial
9	Dec. 14, 2017 United Financial/Progressive Letter to Peterson
10	Jan. 28, 2019 Personal Injury Complaint, Eighth Judicial District Court Case No. A-19-788276-C
11	Feb. 7, 2019 Affidavit of Service, Eighth Judicial District Court Case No. A-19-788276-C
12	Mar. 8, 2019 Default, Eighth Judicial District Court Case No. A-19-788276-C
13	Aug. 3, 2020 Notice of Entry of Judgment, Assignment, and Order, Eighth Judicial District Court Case No. A-19-788276-C
14	Progressive Nevada Commercial Auto Policy
15	Plaintiff John Peterson's Proposed First Amended Complaint

